

MOUND COTTON WOLLAN & GREENGRASS  
Costantino P. Suriano (CS-4061)  
Frank J. DeAngelis (FD-9334)  
One Battery Park Plaza  
New York, New York 10004  
212-804-4200  
Attorneys for Defendant  
Delhi Industries Inc.

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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JOHN MOYNIHAN,

Plaintiff,

Civil Action No. 07 Civ. 11498(GBD)

v.

**NOTICE OF REMOVAL**

DELHI INDUSTRIES INC.,

Defendant.

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TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

Pursuant to 28 U.S.C. §§ 1441 and 1446, defendant Delhi Industries Inc. ("Delhi") hereby files this Notice of Removal of the above-captioned matter from the Supreme Court of the State of New York, New York County, to the United States District Court for the Southern District of New York. In support of the removal, Delhi respectfully states:

1. The plaintiff commenced this action in or about September 4, 2007. On November 30, 2007, a copy of the summons and complaint was delivered, in violation of the Hague Convention, by registered mail, to Delhi's offices in Delhi, Ontario, Canada. A copy of the complaint is annexed hereto as Exhibit A. As the complaint indicates, the action was filed in the New York Supreme Court, County of New York.

2. Prior to November 30, 2007, Delhi had not received a copy of the complaint, nor did it have notice that an action had been commenced. Although the summons and complaint were not properly served, in an abundance of caution this Notice of Removal is being filed within thirty days of the improper service.

3. The complaint alleges that on March 7, 2006, plaintiff was injured while working on mechanical equipment alleged to have been manufactured by defendant. (See Exhibit A, at ¶ 9.)

4. Although the amount in controversy is not stated in the complaint, plaintiff claims that he "sustained serious and permanent injuries; together with other personal injuries; was required to expend monies for medical care and attention; was unable to attend to his usual duties and activities for a protracted period of time and was otherwise injured." (See Exhibit A, at ¶ 11.) Thus, there is no question that the amount in controversy exceeds \$75,000.

5. According to the complaint, the plaintiff is both a citizen of and resides in the County, City and State of New York. (See Exhibit A, ¶ 1.)

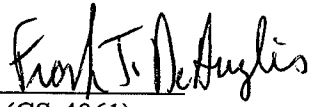
6. Delhi is a citizen of Canada, as well as a Canadian corporation with its principal place of business in Delhi, Ontario, Canada. (See Exhibit B.)

7. The United States District Court for the Southern District of New York has original jurisdiction over this matter under 28 U.S.C. § 1332(a) in that there is complete diversity of citizenship between plaintiff and the defendant and the amount in controversy is in excess of \$75,000.

8. A true copy of this Notice of Removal has been filed with the Supreme Court of the State of New York, County of New York, and served on plaintiff, as provided by 28 U.S.C. §1446(a).

Respectfully submitted,

MOUND COTTON WOLLAN  
& GREENGRASS  
Attorneys for Defendant  
Delhi Industries Inc.

By s/ Frank J. DeAngelis   
Costantino P. Suriano (CS-4061)  
Frank J. DeAngelis (FD-9334)

Dated: December 21, 2007

## EXHIBIT A

NOV-30-2007 17:15 FROM:

4168682150

TO:4168829213

P.6/12

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
JOHN MOYNIHAN,

Plaintiff,

-against-

VERIFIED COMPLAINT

DELHI INDUSTRIES INC.,

Defendant.  
-----X

Plaintiff, complaining of the defendant by their attorneys BAUMAN, KUNKIS & OCASIO-DOUGLAS, P.C., respectfully show to the Court and allege:

1. That at all the times hereinafter mentioned, plaintiff was a resident of the County, City and State of New York.

2. Upon information and belief, that at all the times hereinafter mentioned, defendant was a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

3. Upon information and belief, that at all the times hereinafter mentioned, defendant was a foreign corporation licensed to do business in the State of New York.

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TO: 41686829213

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4. Upon information and belief, that at all the times hereinafter mentioned, defendant manufactured a certain Power Ventilator, Model BI-24 CW BHD (hereinafter referred to as "Ventilator").

5. Upon information and belief, that at all the times hereinafter mentioned, defendant designed a certain Ventilator.

6. Upon information and belief, that at all the times hereinafter mentioned, defendant distributed a certain Ventilator.

7. Upon information and belief, that at all the times hereinafter mentioned, defendant sold a certain Ventilator.

8. That at all the times hereinafter mentioned, plaintiff JOHN MOYNIHAN is an employee of 80 Central Park West Apartments Corp.

9. That on the 7th day of March, 2006, at approximately 9:00 to 10:00 A.M., while plaintiff was lawfully in the course of his employment as the resident manager in the basement at 80 Central Park West, New York, New York, and while he was changing the belt, the Ventilator rotated backwards causing plaintiff's right index finger to become caught in the V-belt drive of the Ventilator causing plaintiff to sustain serious and permanent personal injuries as a result of the negligence of the defendant in the sale, distribution, manufacture and design of the said Ventilator and without any negligence on the part of the plaintiff contributing thereto.

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10. That defendant was negligent in the design, manufacture, sale and distribution of the said Ventilator in that the said Ventilator was knowingly, carelessly, improperly and dangerously engineered, designed, manufactured and sold; in that the said Ventilator when used for its ordinary, intended and foreseeable purpose, constituted an inherently dangerous and unsafe instrumentality to every user thereof; in that defendant knew or should have known of the aforesaid defects and conditions, but nevertheless, failed to remedy the same; in failing to properly and safely inspect the same and in failing to take adequate precautions to prevent the occurrence of the accident to plaintiff herein; in failing to include a component to isolate the Ventilator from reverse air flow; and in otherwise being negligent.

11. That by reason of the foregoing, plaintiff JOHN MOYNIHAN sustained serious and permanent injuries; together with other personal injuries; was required to expend monies for medical care and attention; was unable to attend to his usual duties and activities for a protracted period of time and was otherwise injured.

12. That due to the foregoing, plaintiff JOHN MOYNIHAN has been damaged in a sum which is just, fair and compensable and exceeds the jurisdictional limits of all lower Courts which would otherwise have jurisdiction.

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AS AND FOR A SECOND CAUSE OF ACTION ON  
BEHALF OF PLAINTIFF JOHN MOYNIHAN

13. That defendant knew that the said Ventilator would be used for its ordinary, intended and foreseeable use and purpose without inspection by individuals, and by placing the same upon the market and offering the same and making the same available for use as aforesaid, they did expressly and impliedly warrant and represent to all intended and foreseeable users that the said Ventilator was safe and would prevent the accident herein and that the said Ventilator was merchantable and reasonably safe and fit for its ordinary, intended and foreseeable use and purpose.

14. That contrary to their expressed or implied warranties and representations as aforesaid, the said Ventilator was unmerchantable, unfit and unsafe for its ordinary intended and foreseeable use and purpose and contained aforesaid latent, dangerous defects and conditions.

15. That the plaintiff was unaware of the said aforesaid dangerous defects and conditions and sustained his injuries while using the said Ventilator in its ordinary, intended and foreseeable use and purpose and as a direct result of the aforesaid dangerous defects and conditions, was injured as aforesaid.

16. That by reason of the aforesaid, plaintiff JOHN MOYNIHAN has been damaged in a sum which is just, fair and compensable and exceeds the jurisdictional limits of all lower Courts which would otherwise have jurisdiction.



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AS AND FOR A THIRD CAUSE OF ACTION ON  
BEHALF OF PLAINTIFF JOHN MOYNIHAN

17. That the said Ventilator was defective as aforesaid, and those defects were substantial factors in bringing about the plaintiff's injuries, pain and suffering.

18. That at all the times herein mentioned, the plaintiff was using the Ventilator for the purposes and in the manner intended.

19. That plaintiff would not have and did not by the exercise of reasonable care, discover the defects of the said Ventilator and perceive their danger.

20. That the plaintiff by the exercise of reasonable care as aforesaid, could not have otherwise averted his injuries and damages under the circumstances then prevailing.

21. That by reason of the foregoing, defendants are liable to plaintiff under the doctrine of strict products liability.

22. That by reason of the aforesaid, plaintiff has been damaged in a sum which is just, fair and compensable and exceeds the jurisdictional limits of all lower Courts which would otherwise have jurisdiction.

23. That this action falls within one or more of the exceptions set forth in CPLR 1602.

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WHEREFORE, plaintiff demands judgment against the defendant on the first cause of action in a sum which is just, fair and compensable and which exceeds the jurisdictional limits of all lower Courts which would otherwise have jurisdiction; on the second cause of action in a sum which is just, fair and compensable and which exceeds the jurisdictional limits of all lower Courts which would otherwise have jurisdiction; on the third cause of action in a sum which is just, fair and compensable and which exceeds the jurisdictional limits of all lower Courts which would otherwise have jurisdiction; together with the costs and disbursements of this action.

BAUMAN, KUNKIS & OCASIO-DOUGLAS, P.C.

By: 

ROGER M. KUNKIS, ESQ.  
Attorneys for Plaintiff  
225 West 34th Street  
New York, New York 10122  
(212) 564-3555

NOV-30-2007 17:16 FROM:

4168682150

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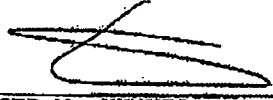
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STATE OF NEW YORK )  
                          ) SS.:  
COUNTY OF NEW YORK )

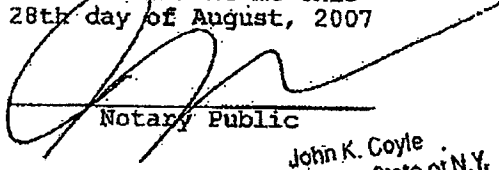
ROGER M. KUNKIS, being duly sworn, deposes and says:

That deponent is an attorney and a partner in the law firm of BAUMAN, KUNKIS & OCASIO-DOUGLAS, P.C., attorneys for plaintiff; that he has read the foregoing COMPLAINT and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true; that the reason that this verification is made by your deponent instead of plaintiff is because plaintiff is not within the County of New York where your deponent's office is located.

Deponent further says that the grounds of his belief as to all matters in the said COMPLAINT are based upon deponent's general investigation of the facts herein.

  
\_\_\_\_\_  
ROGER M. KUNKIS

Sworn to before me this  
28th day of August, 2007

  
\_\_\_\_\_  
Notary Public

John K. Coyle  
Notary Public, State of N.Y.  
NO 01C05046090  
Qualified In Queens County  
Expires July 3 2011

## EXHIBIT B

Delhi Industries - Commercial fans and blowers - centrifugal forward curved blowers, bac... Page 1 of 1

Home	Blowers	Leader Products	Canarm	Technical	What's New	About Delhi
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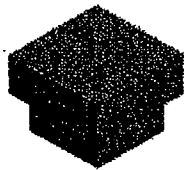
Phone: 519-582-2440  
Fax: 519-582-0581



Software	Catalogues	Install & Maint.	CAD Drawings	Curves	Specifications	Contact Us
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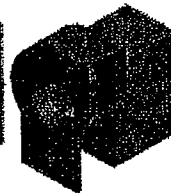
Wall Fans



Fresh Air Supply Units



DWDI - FC Blowers



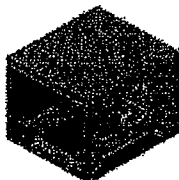
Utility Blowers



DWDI - BIDI Blowers



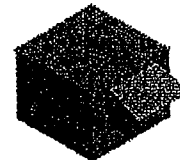
Tube Axial



Duct Blowers

## Delhi Industries Inc.

is a leading manufacturer of air moving products (Fans & Blowers) for the HVAC (Heating, Ventilation & Air Conditioning) Industry and for the OEM (Original Equipment Manufacturers) furnace and air handler markets.



Roof Exhausters

**Delhi Industries Inc.**  
523 James Street  
Delhi, Ontario N4B 2Z3

Phone: 519-582-2440  
Fax: 519-582-0581  
[sales@delhi-industries.com](mailto:sales@delhi-industries.com)

This site is best viewed with IE with screen resolution set at 800 x 600

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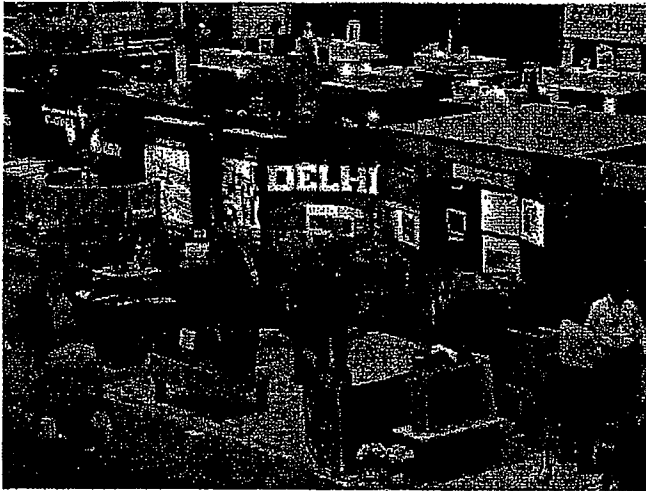


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Phone:  
519-582-2440  
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Delhi Industries Inc. was founded in 1939 in Delhi, Ontario, under the name of Delhi Sheet Metal Works, to manufacture what was at that time a relatively new product; residential furnace blowers. The business expanded under family ownership until it was acquired by Canadian Corporate Management Company Limited (CCMCL) in 1972. In 1984, the company was amalgamated with Sheldons Engineering, an industrial fan manufacturer, to form Delhi-Sheldons Inc, with two operating divisions; Delhi Industries and Sheldons Engineering. In 1986 CCML was acquired by Federal Industries. Shortly thereafter in 1987 a new company, ENSIS, was formed to acquire the Federal Industries Industrial Division, including Delhi Industries Inc. In 1994, Delhi returned to, and remains under, private ownership.

Over the years the company has expanded both in terms of product offered and geographic focus, and now service customers coast to coast throughout North America. The Company currently employs over 150 people and manufactures products in three facilities located in Delhi and Brantford, Ontario.

Service - FOR OVER 60 YEARS - Trust

**Delhi Industries Inc.**  
523 James Street  
Delhi, Ontario N4B 2Z3

Phone: 519-582-2440  
Fax: 519-582-0581  
[sales@delhi-industries.com](mailto:sales@delhi-industries.com)

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Canadian Company Capabilities

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**Delhi Industries Inc.**

Last Updated: 2006-02-24

**Legal Name:** Delhi Industries Inc.

**Operating Name:** Delhi Industries Inc.

**Mailing Address**

523 James St.  
DELHI, Ontario  
N4B 2Z3

**Location Address**

523 James St.  
DELHI, Ontario  
N4B 2Z3

**Telephone:** (519) 582-2440

**Fax:** (519) 582-0581

**Email:** [sales@delhi-industries.com](mailto:sales@delhi-industries.com)

**Website URL:** <http://www.delhi-industries.com>

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**Contact Information**

**David Thorogood**

**Title:** Manager of Sales and Marketing

**Telephone:** (519) 582-2440

**Fax:** (519) 582-0581

**Email:** [dthorogood@delhi-industries.com](mailto:dthorogood@delhi-industries.com)

**Dennis J. Banning**

**Title:** Manager

**Area of Responsibility:** Domestic Sales & Marketing

**Telephone:** (519) 582-2440

**Fax:** (519) 582-0581

**Email:** [dbannin@delhi-industries.com](mailto:dbannin@delhi-industries.com)

**David R. Barclay**

**Title:** President  
**Area of Responsibility:** Management Executive  
**Telephone:** (519) 582-2440  
**Fax:** (519) 582-0581

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## Company Description

**Country of Ownership:** Canada  
**Year Established:** 1939  
**Exporting:** Yes  
**Primary Industry (NAICS):** 333110 - Agricultural Implement Manufacturing  
**Primary Business Activity:** Manufacturer / Processor / Producer  
**Total Sales (\$CDN):** \$10,000,000 to \$24,999,999  
**Export Sales (\$CDN):** \$5,000,000 to \$9,999,999  
**Number of Employees:** 160

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## Product / Service / Licensing

**Product Name:** BLOWERS, INDUSTRIAL, NES

**Product Name:** BLOWERS, INDUSTRIAL, PARTS OF

**FSC Code:** 4140-Fans, Air Circulators, and Blower Equipment

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## Market Profile

### Geographic Markets:

#### Export Experience:

- |                  |                  |
|------------------|------------------|
| ■ Algeria        | ■ Massachusetts  |
| ■ Australia      | ■ Michigan       |
| ■ Greece         | ■ Minnesota      |
| ■ Hong Kong      | ■ Mississippi    |
| ■ Japan          | ■ Missouri       |
| ■ United Kingdom | ■ New Hampshire  |
| ■ United States  | ■ New Jersey     |
| ■ Alabama        | ■ New Mexico     |
| ■ Arizona        | ■ New York       |
| ■ Arkansas       | ■ North Carolina |
| ■ California     | ■ North Dakota   |



- |                        |                  |
|------------------------|------------------|
| ■ Colorado             | ■ Ohio           |
| ■ Connecticut          | ■ Oklahoma       |
| ■ District of Columbia | ■ Oregon         |
| ■ Florida              | ■ Pennsylvania   |
| ■ Georgia              | ■ Rhode Island   |
| ■ Illinois             | ■ South Carolina |
| ■ Indiana              | ■ Tennessee      |
| ■ Iowa                 | ■ Texas          |
| ■ Kansas               | ■ Utah           |
| ■ Kentucky             | ■ Virginia       |
| ■ Louisiana            | ■ Washington     |
| ■ Maine                | ■ West Virginia  |
| ■ Maryland             | ■ Wisconsin      |

**Actively Pursuing:**

- |            |                |
|------------|----------------|
| ■ Brazil   | ■ Nebraska     |
| ■ Mexico   | ■ Nevada       |
| ■ Delaware | ■ South Dakota |
| ■ Idaho    | ■ Vermont      |
| ■ Montana  | ■ Wyoming      |

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Updated: 2007-12-11

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STATE OF NEW YORK )

COUNTY OF NEW YORK )

**AFFIDAVIT OF SERVICE**

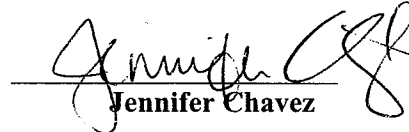
JENNIFER CHAVEZ, being duly sworn, deposes and says:

That deponent is not a party to this action, is over the age of 18 years and resides in Kings County, New York.

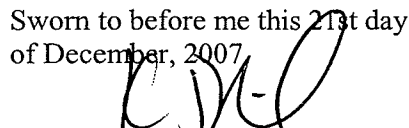
That on December 21, 2007, deponent served the within Notice of Removal upon:

Bauman, Kunkis & Ocasio-Douglas, P. C.  
Attorneys for Plaintiff  
14 Penn Plaza, Suite 2208  
New York, New York 10122

the addresses designated by said entity for that purpose by depositing the same enclosed in a first-class postpaid properly addressed wrapper to said entities at the above addresses in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

  
Jennifer Chavez

Sworn to before me this 21st day  
of December, 2007

  
\_\_\_\_\_  
NOTARY PUBLIC

KEVIN J. BRASSIL  
Notary Public, State of New York  
No. 51-0018311  
Qualified in New York County  
Certificate Filed in New York County  
Commission Expires Sept. 27, 2011 